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G.L., Appellant)	
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and)	Docket No. 20-1285
)	Issued: April 20, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
EAST ORANGE VA HOSPITAL, NEW JERSEY)	
HEALTH CARE SYSTEM, East Orange, NJ,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 29, 2004 appellant, then a 52-year-old medical instrument technician, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2004 she bruised and injured her knee when she tripped over a chair and fell while trying to avoid a falling object while in the performance of duty. She stopped work on December 6, 2004. On March 3, 2005 OWCP accepted the claim for right rib contusion and left knee contusion and paid wage-loss compensation through January 31, 2005. It paid appellant wage-loss compensation on the periodic rolls,

¹ The Board notes that, following the December 31, 2019 decision, OWCP received additional evidence. Appellant also submitted additional new evidence with her appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

effective May 4, 2005. Appellant underwent OWCP-authorized left knee surgery on January 27, 2006. On March 22, 2007 OWCP expanded the acceptance of her claim to include contusion of the right abdominal wall, unspecified internal derangement of the left knee, and tear of the left medial meniscus. On November 29, 2007 it further expanded acceptance of the claim to include the additional conditions of lumbar radiculopathy and internal derangement of the right knee.

On July 7, 2014 OWCP notified appellant that FECA required that her continuing compensation benefits be reduced if she began receiving Social Security Administration (SSA) age-related retirement benefits based on her age and federal service. It further noted that failure to report receipt of such retirement benefits to OWCP could result in an overpayment of compensation. OWCP directed appellant to contact it immediately if she was receiving, or had been approved to receive, SSA age-related retirement benefits.

On December 26, 2018 OWCP received from SSA a Federal Employees Retirement System (FERS)/SSA dual benefits calculation form which reported that appellant did not have Federal Insurance Contributions Act (FICA) federal earnings and that no offset would apply. On February 7, 2019 it noted that there was no FERS offset for her, effective December 21, 2018.

On September 4, 2019 OWCP received a second FERS/SSA dual benefits calculation form from SSA which reported that appellant had been in receipt of SSA age-related retirement benefits since June 2017. The form included calculations of her monthly SSA age-related retirement benefit rates beginning June 1, 2017 and each year thereafter through October 12, 2019. SSA provided appellant's corresponding monthly benefit both with and without FERS.

Effective October 13, 2019, OWCP reduced appellant's 28-day compensation payments to account for the SSA age-related retirement benefits she received that were attributable to her federal service.

On October 15, 2019 OWCP calculated that appellant was overpaid \$21,340.71 for the period June 1, 2017 through October 12, 2019.

On October 25, 2019 OWCP advised appellant of its preliminary overpayment determination that she had received an overpayment of compensation in the amount \$21,340.71 for the period June 1, 2017 through October 12, 2019 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It based its FERS offset overpayment calculation on the information that SSA provided on September 4, 2019. OWCP found that appellant was without fault in the creation of the overpayment. It requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter she could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

Appellant responded on November 19, 2019 requesting that OWCP make a decision based on the written evidence regarding possible waiver of recovery of the overpayment. On her Form

OWCP-20 she noted that she was instructed by SSA to file for retirement due to her age in June 2017, but when she tried to withdraw her benefits, she was informed that she did not have the funds needed to withdraw.

By decision dated December 31, 2019, OWCP finalized its preliminary overpayment determination which found that appellant received an overpayment of compensation in the amount of \$21,340.71 for the period June 1, 2017 through October 12, 2019 for which she was without fault. It further found that the circumstances of the case did not warrant waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$181.12 from appellant's continuing compensation payments every 28 days beginning February 1, 2020.

The issues on appeal before the Board relate to OWCP's finding of an overpayment due to appellant's alleged concurrent receipt of FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

OWCP's procedures provide that an overpayment occurs when FECA wage-loss compensation is not reduced by the FERS/FECA offset amount. Since SSA will not report an offset amount until after SSA benefits are received, an overpayment will almost always occur and will need to be calculated for each period in which the offset amount was not withheld from compensation.² The offset provision of 5 U.S.C. § 8116(d)(2) and applicable regulations apply to SSA age-related retirement benefits that are attributable to federal service.³ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁴ In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of age-related SSA retirement benefits, the Board has observed that OWCP uses a FERS/SSA dual benefits worksheet.⁵ This worksheet is sent to SSA and the completed form is returned to OWCP setting forth purported SSA calculations as to the effective dates and rates of SSA age-related retirement benefits with and without FERS.⁶ Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.⁷

The Board has observed, however, that not all federal employees are enrolled in FERS. Some FECA claimants are enrolled in another retirement program, such as the Civil Service

² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1h (September 2020).

³ See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

⁴ FECA Bulletin No. 97-09 (issued February 3, 1997); *C.T.*, Docket No. 21-0153 (issued July 21, 2021).

⁵ *Id.*

⁶ *Id.*

⁷ *C.T.*, *supra* note 4

Retirement System. Other federal employees are not eligible to be enrolled in a federal retirement program. Therefore, OWCP's procedures with regard to requesting offset information are not applicable to all recipients of FECA compensation and SSA age-related retirement benefits. Thus, the information solicited on the worksheet that OWCP sends to SSA is not applicable to non-FERS claimants and does not establish either the fact or amount of an overpayment.

OWCP determined that appellant received an overpayment of compensation during the period June 1, 2017 through October 12, 2019 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The evidence of record, however, contains conflicting evidence with regard to her retirement coverage. It therefore remains unclear whether appellant was covered under FERS during the period of the alleged overpayment.

As OWCP has not established that appellant received an overpayment of compensation during the period June 1, 2017 through October 12, 2019, the Board finds that OWCP has not met its burden of proof.

IT IS HEREBY ORDERED THAT the December 31, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 20, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board